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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 10 and 12

[FAC 2021-02; FAR Case 2020-006; Item V; Docket No. FAR-2020-0006, Sequence No. 1]

RIN 9000-AO09

Federal Acquisition Regulation: Documentation of Market Research

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires the head of the agency to document the results of market research in a manner appropriate to the size and complexity of the acquisition.

DATES: *Effective:* [Insert date 30 days after date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis,
Procurement Analyst, at 202-550-0935 or
camara.francis@gsa.gov for clarification of content. For
information pertaining to status or publication schedules,
contact the Regulatory Secretariat Division at 202-501-
4755. Please cite FAC 2021-02, FAR Case 2020-006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule to
implement section 818 of the National Defense Authorization
Act for Fiscal Year 2020 (Pub. L. 116-92). Section 818
amends 10 U.S.C. 2377(c) and 41 U.S.C. 3307(d) to require
the head of the agency to document the results of market
research in a manner appropriate to the size and complexity
of the acquisition.

II. Discussion and Analysis.

Paragraph (e) of FAR 10.002 currently states that
agencies should document the results of market research in
a manner appropriate to the size and complexity of the
acquisition. The change will make this mandatory.
Conforming changes were made to FAR 12.101.

**III. Publication of this final rule for public comment is
not required by statute**

The statutory provision that applies to the publication of the FAR is 41 U.S.C. 1707. Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it addresses agency documentation of market research. These requirements affect only the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a

significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 10 and 12

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 10 and 12 as set forth below:

1. The authority citation for 48 CFR parts 10 and 12 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 10—MARKET RESEARCH

10.002 [Amended]

2. Amend section 10.002 by removing from paragraph (e) “Agencies should” and adding “The head of the agency shall” in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.101 [Amended]

3. Amend section 12.101 by removing from the introductory text “Agencies” and adding “The head of the agency” in its place.